

AMENDED IN ASSEMBLY JUNE 28, 2004

AMENDED IN ASSEMBLY MAY 28, 2004

AMENDED IN ASSEMBLY SEPTEMBER 8, 2003

SENATE BILL

No. 494

Introduced by Senator Escutia

(Coauthors: Assembly Members Bermudez, Koretz, Longville, and Montanez)

February 20, 2003

An act to amend Section 23004.1 of the Government Code, and to amend Section 14124.791 of the Welfare and Institutions Code, relating to health services.

LEGISLATIVE COUNSEL'S DIGEST

SB 494, as amended, Escutia. Health services.

(1) Existing law prescribes procedures under which a provider, beneficiary, or the Director of Health Services may bring an action or claim against a 3rd party who is liable for services rendered to a beneficiary under the Medi-Cal program. Existing law provides that, subject to a prior right of recovery of the director, a provider who has rendered services to a beneficiary because of an injury for which a 3rd party is liable and who has received payment under the Medi-Cal program shall be entitled to file a lien for the services provided thereto against any judgment, award, or settlement obtained by the beneficiary or the director against that 3rd party if the provider has made a full reimbursement of any fees paid to the department for those services.

This bill would revise these 3rd-party claim procedures. The bill would revise the provider lien procedures to instead authorize the lien for the reasonable and necessary charges for services provided to the

beneficiary against the portion of any judgment, award, or settlement relating to past medical expenses in the action or claim brought against a 3rd party.

(2) Existing law provides procedures under which, in any case in which a 3rd person is liable to pay for health services provided by a county to an injured or diseased person, the county may recover from that 3rd person or be subrogated to any right or claim that the injured or diseased person, including identified parties in interest, have against that 3rd person. Under these procedures the county's right of action abates during the pendency of an action brought for damages against the 3rd person by the injured or diseased person and continues as a first lien against any judgment recovered by the injured or diseased person.

This bill would provide that the county's right of action would continue under this provision as a first lien, in addition, against any settlement ~~or, compromise-recovered, arbitration award, mediation settlement, or any other recovery obtained~~ by the injured or diseased person. The bill would also provide that a county enforcing a lien under these provisions is a provider for purposes of paragraph (1).

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 23004.1 of the Government Code is
2 amended to read:
3 23004.1. (a) Subject to Section 23004.3, in any case in which
4 the county is authorized or required by law to furnish hospital,
5 medical, surgical, or dental care and treatment, including
6 prostheses and medical appliances, to a person who is injured or
7 suffers a disease, under circumstances creating a tort liability upon
8 some third person to pay damages therefor, the county shall have
9 a right to recover from that third person the reasonable value of the
10 care and treatment so furnished or to be furnished, or shall, as to
11 this right, be subrogated to any right or claim that the injured or
12 diseased person, his or her guardian, personal representative,
13 estate, or survivors has against that third person to the extent of the
14 reasonable value of the care and treatment so furnished or to be
15 furnished.
16 (b) The county may, to enforce rights established under
17 subdivision (a), institute and prosecute legal proceedings against



1 the third person who is liable for the injury or disease in the
2 appropriate court, either in its own name or in the name of the
3 injured person, his or her guardian, personal representative, estate,
4 or survivors. This action shall be commenced within the period
5 prescribed in Section 340 of the Code of Civil Procedure. In the
6 event that the injured person, his or her guardian, personal
7 representative, estate, survivors, or ~~either any~~ of them brings an
8 action for damages against the third person who is liable for the
9 injury or disease, the county's right of action shall abate during the
10 pendency of that action, and continue as a first lien against any
11 judgment, settlement, ~~or compromise recovered~~ *compromise,*
12 *arbitration award, mediation settlement, or any other recovery*
13 *obtained* by the injured or diseased person, his or her guardian,
14 personal representative, estate, or survivors, against the third
15 person who is liable for the injury or disease, to the extent of the
16 reasonable value of the care and treatment so furnished or to be
17 furnished. When the third person who is liable is insured, the
18 county shall notify the third person's insurer, when known to the
19 county, in writing of the lien within 30 days following the filing
20 of the action by the injured or diseased person, his or her guardian,
21 personal representative, estate, or survivors, against the third
22 person who is liable for the injury or disease. However, failure to
23 so notify the insurer shall not prejudice the claim or cause of action
24 of the injured or diseased person, his or her guardian, personal
25 representative, estate, or survivors, or the county.

26 SEC. 2. Section 14124.791 of the Welfare and Institutions
27 Code is amended to read:

28 14124.791. (a) The Legislature finds and declares that
29 providers of emergency medical care furnish a vital public service
30 of great benefit to all Californians by furnishing emergency
31 medical services to all without regard to the ability to pay, as
32 required by existing law. The Legislature further finds and
33 declares that ensuring that Medi-Cal providers obtain reasonable
34 compensation helps alleviate the severe access problems already
35 experienced by Medi-Cal beneficiaries. It is the intent of the
36 Legislature to respond to the invitation of the California Supreme
37 Court in *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, to
38 permit providers to recover their reasonable and necessary charges
39 while protecting Medi-Cal beneficiaries' rights to recover full
40 damages from responsible third-party tortfeasors, and to preclude

1 tortfeasors from receiving the benefit of the Medi-Cal program at
2 the expense of providers, beneficiaries, and taxpayers. The
3 Legislature further finds and declares that granting providers lien
4 recovery rights increases a provider's incentive to notify the State
5 Department of Health Services of the existence of third-party
6 liability. This in turn increases the number of cases in which the
7 department is reimbursed by providers who can collect for services
8 rendered from responsible third parties and will result in savings
9 to the state.

10 (b) Subject to the director's prior right of recovery, a provider
11 who has rendered services to a beneficiary because of an injury for
12 which a third party is or may be liable and who has received
13 payment under the Medi-Cal program shall be entitled to a lien for
14 the reasonable and necessary charges for services provided to the
15 beneficiary against the portion of any judgment, award, or
16 settlement relating to past medical expenses obtained by the
17 beneficiary or the director against that third party. A provider may
18 recover upon the lien only if the provider has made a full
19 ~~reimbursement to the director of any payment for those services~~
20 ~~within 35 days of the final determination of the amount the~~
21 ~~provider will be reimbursed on the lien.~~ *reimbursement of any fees*
22 *paid by the Medi-Cal program for these services.*

23 (c) If either the beneficiary or the director brings an action or
24 claim against the third party, the party bringing the action shall,
25 within 30 days of bringing the action, give written notice to any
26 provider who is eligible to file a lien under subdivision (b) of, to
27 the extent known, the name and address of each third party and the
28 name and address of each insurance carrier that has insured the
29 third party against the liability and, to the extent applicable, the
30 name of the action and court or state or local agency in which the
31 action or claim is brought. Notice shall be given by personal
32 service or registered mail, and proof of service shall be filed in the
33 action or claim.

34 (d) (1) The lien shall become ~~effective~~ *perfected* when the
35 provider sends a written notice containing the name and address
36 of the injured person, the name and location of the provider, and
37 the amount claimed as reasonable and necessary charges, to the
38 ~~beneficiary and, if known at the time the notice is given, the~~
39 ~~beneficiary's attorney.~~ *beneficiary's attorney, if known, and if not*
40 *known, to the beneficiary or the beneficiary's legal representative.*

(2) If notice is given to the beneficiary and the provider subsequently has notice that the beneficiary has legal representation, the provider shall give written notice to the beneficiary's attorney. The failure to give notice to the beneficiary's attorney pursuant to this paragraph shall not invalidate the lien.

(3) The written notice required by this subdivision shall be sent by registered mail ~~with proof of service~~.

(4) The amount claimed in the notice, or so much of that amount as can be satisfied from any final judgment, compromise, or settlement agreement after paying any other ~~liens~~ *medical provider lien the priority for which is statutorily required*, shall be deemed to be included within any judgment, award, or settlement unless the judgment, award, or settlement expressly allocates a lesser amount. Any recovery on ~~any provider~~ *the* lien shall be limited to that portion of the judgment, award, or settlement constituting compensation for past medical expenses.

(e) ~~The~~ *Where a provider is entitled to file a lien under this section, the* amount paid under the Medi-Cal program shall be inadmissible in any action or claim against the third party and the third party may not use the amount paid by Medi-Cal to reduce the amount of its liability. ~~This provision overturns Hanif v. Housing Authority of Yolo County (1988), 200 Cal.App.3d 635, to the extent it is inconsistent herewith. This provision is consistent with the law as stated in Helfend v. Southern California Rapid Transit District (1970), 2 Cal.3d 1.~~ *amount of its liability.*

(f) If the beneficiary has filed a third-party *action or claim*, the court where the *action or claim* was filed shall have jurisdiction over a dispute between the provider and the beneficiary regarding the amount of a lien asserted pursuant to this section that is based upon an allocation of damages contained in a ~~judgment, settlement, settlement~~ *judgment, settlement, or compromise of the third-party action or claim*. If no third-party ~~claim or action~~ *action or claim* has been filed, any superior court in California where venue would have been proper had a claim or action been filed shall have jurisdiction over the motion. The motion may be filed as a special motion and treated as an ordinary law and motion proceeding and subject to regular motion fees. The reimbursement determination motion shall be treated as a special proceeding of a civil nature pursuant to Part 3 (commencing with Section 1063) of the Code of Civil

1 Procedure. When no action is pending, the person making the
2 motion shall be required to pay a first appearance fee. When an
3 action is pending, the person making the motion shall pay a regular
4 law and motion fee.

5 (g) In any motion filed pursuant to subdivision (f), all of the
6 following shall apply:

7 (1) The provider asserting a lien pursuant to this section and the
8 beneficiary shall be made a party to the motion and either the
9 beneficiary or the provider may file the motion. In cases where the
10 third-party claim was tried to a verdict or judgment, the motion
11 shall be heard by the trial judge, if available. In cases where an
12 action has been filed and settled or otherwise resolved prior to
13 verdict or judgment, the motion shall be heard by the judge to
14 whom the matter was assigned, or, if no judge was assigned or the
15 assigned judge is unavailable, in the regular law and motion
16 department or by a judge assigned to hear the matter. When no
17 action has previously been filed, the motion shall be assigned and
18 heard pursuant to the regular law and motion procedures in the
19 court where the motion is filed.

20 ~~(2) The beneficiary shall produce to the provider Within 14~~
21 ~~days of a request from a provider; the beneficiary shall serve a true~~
22 ~~and correct copy of those portions of the settlement document~~
23 ~~upon which the asserted allocation is based that are relevant to the~~
24 ~~determination motion, prior to the filing of the motion.~~

25 ~~(3) motion. If not requested by a provider, a true and correct~~
26 ~~copy of those portions of the settlement document on which the~~
27 ~~asserted allocation is based that are relevant to the determination~~
28 ~~motion shall be served with the motion.~~

29 (3) (A) If the beneficiary is the moving party, notice of the
30 motion shall be addressed to the provider at the provider's address
31 as shown on the notice of lien and to any counsel representing the
32 provider on the lien, if known. If the provider is the moving party,
33 notice of the motion shall be addressed to the beneficiary at the
34 beneficiary's last known address and to the beneficiary's counsel;
35 shall be addressed to any counsel representing the provider on the
36 lien, if known, and if not known, to the provider at the provider's
37 address as shown on the notice of lien. If the provider is the moving
38 party, notice of the motion shall be addressed to the beneficiary's
39 counsel, if known. If the beneficiary is not represented by counsel,
40 the notice of motion shall be mailed to the beneficiary by

1 registered mail. Proof of service in compliance with this
2 subdivision shall be filed with the court.

3 *(B) Notice required under this paragraph shall be given*
4 *pursuant to subdivision (b) of Section 1005 of the Code of Civil*
5 *Procedure.*

6 (4) If the beneficiary is represented by counsel, the beneficiary
7 shall bear the burden of proof as to the fairness of the allocation
8 and the burden of producing evidence, by declaration or other
9 written form, as to the manner in which the allocation was made
10 and the evidentiary basis for the allocation. If the beneficiary is not
11 represented by counsel, the party making the motion shall bear the
12 burden of proof as to the fairness of the allocation and the burden
13 of producing evidence, by declaration or other written form, as to
14 the manner in which the allocation was made and the evidentiary
15 basis for the allocation.

16 (5) In determining the fairness of the allocation, the court shall
17 consider the relationship of damages for past medical expenses to
18 the total damages claimed and the total amount of the settlement.

19 ~~(6) If a settlement has been reached contingent upon the~~
20 ~~amount of a lien asserted pursuant to this section, the settlement~~
21 ~~remains contingent unless the beneficiary accepts the allocation~~
22 ~~made by the court in its decision on the motion, within 30 days of~~
23 ~~the notice of entry of the court's findings, decision, or order.~~

24 ~~(7)–~~

25 (6) The court shall issue its findings, decision, and order,
26 which shall be considered the final determination of the parties'
27 rights and obligations with respect to the provider's lien, subject
28 to reconsideration as authorized in paragraph (8).

29 ~~(8)–lien, unless the settlement is contingent on an acceptable~~
30 ~~allocation of the settlement proceeds, in which case, the court's~~
31 ~~findings, decision, and order shall be considered a tentative~~
32 ~~determination. If the beneficiary does not serve notice of a~~
33 ~~rejection of the tentative determination, which shall be based~~
34 ~~solely upon a rejection of the contingent settlement, within 30 days~~
35 ~~of the notice of entry of the court's tentative determination, subject~~
36 ~~to further consideration by the court pursuant to paragraph (7),~~
37 ~~the tentative determination shall become final.~~

38 (7) If the beneficiary does not accept the ~~settlement~~ tentative
39 determination, which shall be based solely upon a rejection of the
40 contingent settlement, any party may subsequently seek

1 ~~reconsideration~~ *further consideration* of the court's findings upon
2 application to modify the prior findings, decision, or order, based
3 on new or different facts or circumstances. The application shall
4 include an affidavit showing what application was made before,
5 when, and to what judge, what order or decision was made, and
6 what new or different facts or circumstances ~~are claimed to exist.~~

7 ~~Upon reconsideration, including a different settlement, are~~
8 ~~claimed to exist. Upon further consideration, the court may~~
9 modify the allocation in the interest of fairness and for good cause.

10 (h) No claim authorized by this section shall be permitted to the
11 extent that the claim would reduce the director's right to recover
12 pursuant to Section 14124.78. However, the provider's
13 reimbursement to the department pursuant to subdivision (b) shall
14 extinguish the director's claim for the same services. *Section 1008*
15 *of the Code of Civil Procedure does not apply to any motion filed*
16 *pursuant to subdivision (f).*

17 (i) Any person, firm, or corporation, including, but not limited
18 to, an insurance carrier, who receives notice of a lien asserted
19 pursuant to this section and who makes any payment to the injured
20 person, or to his or her attorney, heirs, or legal representative, for
21 the injuries the beneficiary sustained, after receipt of this notice,
22 without paying to the provider the amount the provider is entitled
23 to receive as payment on its lien, shall be liable to the provider for
24 that amount.

25 (j) For purposes of this section, "reasonable and necessary
26 charges" means the usual, customary, and reasonable charges for
27 medical services in the geographic region where the services were
28 provided, when these services were medically necessary to treat
29 the injuries allegedly caused by a third-party tortfeasor. ~~The~~ *The*
30 *beneficiary has the burden of proof in a third-party action or claim*
31 *to establish the reasonable value of medical and hospital expenses,*
32 *reasonably required and actually provided for the treatment of the*
33 *beneficiary as the result of a third-party's conduct.*

34 (k) *The amount paid to the provider by Medi-Cal shall not be*
35 *considered in the determination of the amount of a provider's lien*
36 *or in the determination of the amount of the third-party tortfeasor's*
37 *liability to the beneficiary. This provision overturns Hanif v.*
38 *Housing Authority of Yolo County (1988) 200 Cal.App.3d 635, to*
39 *the extent that case is inconsistent with this provision. This*

1 *provision is declarative of existing law as stated in Helfend v.*
2 *Southern California Rapid Transit District (1970) 2 Cal.3d 1.*

3 ~~(k)~~

4 (l) When a final judgment in the third-party claim includes a
5 special finding by a judge, jury, or arbitrator that the beneficiary
6 was partially at fault, the provider's lien shall be reduced by the
7 same comparative fault percentage by which the beneficiary's
8 recovery for past medical expenses was reduced.

9 ~~(l)~~

10 (m) At the request of the beneficiary, the court or arbitrator in
11 the third-party *action or* claim shall provide for special findings
12 with respect to compensation allocated to past medical expenses.

13 ~~(m)~~

14 (n) The provider's lien shall be reduced by the pro rata amount
15 commensurate with the beneficiary's reasonable attorney's fees
16 and costs in accordance with the common fund doctrine. The
17 amount of the reduction in the provider's lien pursuant to this
18 subdivision shall accrue solely to the benefit of the beneficiary and
19 ~~shall not increase attorney's fees and costs payable to the~~ *shall not*
20 *constitute additional attorney's fees and costs owed or payable to*
21 *the beneficiary's attorney.*

22 ~~(n) The amount claimed by the beneficiary, or his or her heirs~~
23 ~~or personal representative in case of his or her death, as the~~
24 ~~provider's reasonable and necessary charges in securing a~~
25 ~~judgment, settlement, award, or compromise in the third-party~~
26 ~~claim, shall preclude the beneficiary, or his or her heirs or personal~~
27 ~~representative in case of his or her death, from challenging the~~
28 ~~reasonableness and necessity of those charges in any dispute~~
29 ~~between the provider and the beneficiary regarding the lien, unless~~
30 ~~a lesser amount has been specifically allocated in a judgment,~~
31 ~~settlement, award, or compromise.~~

32 (o) If any provision of this section, or the application of any
33 provision of this section to any person, firm, corporation, or other
34 entity or to any circumstance or situation, shall be held invalid, the
35 remaining provisions of this section shall not be affected thereby,
36 and shall be given effect.

37 (p) Subdivision (e) shall have no effect on the rights of parties
38 or public agencies under Section 985 of the Government Code.

1 (q) As used in this section “provider” shall include, but is not
2 limited to, a county enforcing a lien pursuant to Section 23004.1
3 of the Government Code.

4 _____

5 CORRECTIONS

6 Text — Page 6.

7 _____

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